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10 Attorneys for Plaintiff
11 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION

12
13 THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15
16 AMERIS BANK, a Georgia state-
17 chartered banking corporation, doing
business as BALBOA CAPITAL
CORPORATION,

18 Plaintiff,

19 vs.

20 ZARIZ TRANSPORT INC., a Florida
21 corporation; and YAAKOV ISRAEL
GUZELGUL, an individual,

22 Defendants.
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Case No.:

**PLAINTIFF AMERIS BANK D/B/A/
BALBOA CAPITAL
CORPORATION'S COMPLAINT
FOR:**

- 1. BREACH OF EQUIPMENT
FINANCING AGREEMENT**
- 2. BREACH OF PERSONAL
GUARANTY**

1 Plaintiff Ameris Bank, a Georgia state-chartered banking corporation doing
2 business as Balboa Capital Corporation, (“Balboa” or “Plaintiff”), alleges as
3 follows:

4 **PARTIES AND JURISDICTION**

5 1. Plaintiff Ameris Bank d/b/a Balboa Capital Corporation (“Balboa” or
6 “Plaintiff”) is, and at all times relevant to this action was, a Georgia state-chartered
7 banking corporation with Balboa Capital Corporation as one of its divisions, which
8 division has its principal place of business in the State of California, County of
9 Orange.

10 2. Defendant Zariz Transport Inc. (“Zariz Transport”) is, and at all times
11 relevant to this action was, a Florida corporation with its principal place of business
12 in the County of Palm Beach, State of Florida.

13 3. Defendant Yaakov Israel Guzelgul (“Guzelgul”), an individual, is and
14 at all times relevant to this action was, a resident of the County of Palm Beach,
15 State of Florida, and was an officer, director, shareholder, agent and/or owner of
16 Defendant Zariz Transport.

17 4. Plaintiff is informed and believes, and thereon alleges, that each
18 Defendant, directly or indirectly, or through agents or other persons, was engaged
19 with some or all of the other Defendants in a joint enterprise for profit, and bore
20 such other relationships to some or all of the other Defendants so as to be liable for
21 their conduct with respect to the matters alleged below. Plaintiff is informed and
22 believes and thereon alleges that each Defendant acted pursuant to and within the
23 scope of the relationships alleged above, that each Defendant knew or should have
24 known about the foregoing, and that each Defendant authorized, ratified, adopted,
25 approved, controlled, and aided and abetted the conduct of all other Defendants.

26 5. The obligations sued upon herein are commercial in nature and the
27 Complaint herein is not subject to the provisions of California Civil Code section
28

1 1801, *et seq.* (Unruh Retail Installment Sales Act), and/or California Civil Code
 2 section 2981, *et seq.* (Rees-Levering Motor Vehicle Sales and Finance Act).

3 6. Pursuant to the Equipment Financing Agreement and Guaranty
 4 described herein below, defendant Zariz Transport and defendant Guzelgul agreed
 5 that those documents would be governed by the laws of the State of California. In
 6 addition, the Equipment Financing Agreement provides, in pertinent part, as
 7 follows:

8 **30. CONSENT TO EXCLUSIVE AND MANDATORY**
 9 **JURISDICTION AND VENUE OF CALIFORNIA.**

10 Debtor submits to the jurisdiction of California and agrees
 11 that any action or proceeding to enforce this Agreement, or
 12 any action or proceeding arising out of or related to this
 Agreement will be exclusively commenced, initiated and
 litigated in the California State Courts of Orange County
 California and/or the United States District Court for the
 Central District of California, Santa Ana Division.

13 7. Jurisdiction. This Court has jurisdiction over the case pursuant to 28
 14 U.S.C. § 1332(a).

15 8. Venue. The venue is proper in this judicial district pursuant to 28
 16 U.S.C. § 1391(b)(2), and in the Southern Division pursuant to 28 U.S.C. § 84(c)(3).

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Equipment Financing Agreement)**

19 **(Against Zariz Transport)**

20 9. Balboa alleges and incorporates by reference each and every allegation
 21 contained above, inclusive, as though each were fully set forth here.

22 10. Prior to August 2022, Balboa is informed and believes that Zariz
 23 Transport initiated and engaged with MHC Truck Source - Atlanta, located at 1630
 24 Iris Drive SW, Conyers, GA 30094 ("Equipment Vendor"), in order to coordinate
 25 the acquisition and financing of certain equipment (hereinafter referred to as the
 26 "Collateral") for its business. The Equipment Vendor worked with Zariz Transport
 27 in the selection of the Collateral and in coordinating its delivery.
 28

1 11. Thereafter, Balboa is informed and believes, and therefore alleges, that
2 the Equipment Vendor initiated and coordinated submission of Defendants’
3 electronic credit application to Balboa and other financial institutions. Upon
4 review, Zariz Transport concluded that Balboa offered agreeable terms to finance
5 the Collateral commensurate with its requirements. Thereafter, the Equipment
6 Vendor accumulated and submitted to Balboa the requisite signatories,
7 documentation, and financial information from the Defendants to finance the
8 Collateral being supplied by the Equipment Vendor.

9 12. On or about August 24, 2022, Zariz Transport executed a certain
10 written Equipment Financing Agreement No. 419188-000 (the “EFA”), under the
11 terms of which Balboa loaned to Zariz Transport the principal sum of One-Hundred
12 Sixty-Eight Thousand Four-Hundred Ninety-Seven Dollars and Sixty-Two Cents
13 (\$168,497.62), in order to finance the Collateral for its business. The EFA required
14 Zariz Transport to make sixty (60) monthly payments of \$3,563.55, payable on the
15 24th day of each month, beginning October 24, 2022. A true and correct copy of
16 the EFA is attached as **Exhibit A** and is incorporated here by reference.

17 13. The last payment received by Balboa was credited toward the monthly
18 payment due for May 24, 2023. Therefore, on or about June 24, 2023, Zariz
19 Transport breached the EFA by failing to make the monthly payment due on that
20 date. Defendant Zariz Transport’s failure to make timely payments is a default
21 under the terms of the EFA.

22 14. In accordance with the EFA, and as a proximate result of Zariz
23 Transport’s default thereunder, Balboa declared the entire balance of the payments
24 under the EFA to be immediately due and payable to Balboa. In addition, pursuant
25 to the EFA, Balboa is entitled to recover all accelerated payments due under the
26 EFA. Therefore, there became due the sum of \$185,304.60. These amounts are
27 exclusive of interest, attorneys’ fees and costs, no portion of which sum has been
28 paid by Zariz Transport.

15. Balboa has performed all of the terms, conditions, and covenants required to be performed by it under the terms of the EFA, except as excused or prevented by the conduct of Zariz Transport.

16. In addition, the terms of the EFA provide that Zariz Transport is liable to Balboa for late charges on all payments not made in a timely manner. As of the date of the filing of Balboa's Complaint, late charges in the sum of \$855.26 are now due and owing.

17. As a proximate result of Zariz Transport's breach of the EFA, Balboa has been damaged in the total sum of \$186,159.86, plus prejudgment interest from June 24, 2023, until the entry of judgment herein.

18. Further, under the terms of the EFA, Zariz Transport promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of the EFA. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs as against Zariz Transport.

19. The EFA also provides Balboa the remedy of possession of the Collateral and to obtain an order that Balboa may, in accordance with applicable state law, sell the remaining Collateral and apply the net proceeds from the sale to the remaining loan balance. Alternatively, if possession cannot be had, Balboa is entitled to recover the value of the Collateral.

SECOND CAUSE OF ACTION

(Breach of Guaranty)

(Against Guzelgul)

20. Balboa alleges and incorporates by reference each and every allegation contained above, inclusive, as though each were fully set forth here.

21. Concurrent with the execution of the EFA, and in order to induce Balboa to enter into the EFA with Zariz Transport, Guzelgul guaranteed, in writing, the payment of the then existing and future indebtedness due and owing to Balboa under the terms of the EFA. A true and correct copy of the written Personal

1 Guaranty signed by Guzelgul (the “Guaranty”) is attached as **Exhibit B** and
 2 incorporated herein by reference.

3 22. Balboa has performed all the terms, conditions, and covenants required
 4 to be performed by Balboa under the terms of the Guaranty, except as excused or
 5 prevented by the conduct of Guzelgul.

6 23. Following a default of Zariz Transport under the terms of the EFA,
 7 Balboa demanded Guzelgul make the payments required under the EFA. Guzelgul
 8 failed to meet the Guaranty obligations and make the payments required under the
 9 EFA.

10 24. Pursuant to the terms of the Guaranty, the sum of \$186,159.86, plus
 11 prejudgment interest from June 24, 2023, is due and payable to Balboa from
 12 Guzelgul. This Complaint, in addition to previous demands, shall constitute further
 13 demand upon Guzelgul to pay the entire indebtedness due and owing from Zariz
 14 Transport to Balboa under the terms of the EFA.

15 25. Under the terms of the Guaranty, Guzelgul promised to pay all costs,
 16 including reasonable attorneys’ fees, incurred by Balboa in the enforcement of the
 17 EFA and the Guaranty. Therefore, Balboa requests the Court award Balboa its
 18 reasonable attorneys’ fees and costs, as against Guzelgul.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff Balboa prays for judgment against Defendants, and
 21 each of them, as follows:

22 **On the First and Second Causes of Action:**

- 23 1. The principal sum \$186,159.86;
- 24 2. Prejudgment interest from June 24, 2023 to the date of entry of
 25 judgment;
- 26 3. Late charges and non-sufficient charges in an amount to be proven at
 27 trial;
- 28

1 4. An order to recover possession of the Collateral, which is the subject
2 of the EFA, or if the Collateral cannot be delivered, for its reasonable value
3 according to proof;

4 5. Reasonable attorneys' fees and costs;

5 6. Costs of suit as provided by law; and

6 7. Such other and further relief that the Court considers proper.
7

8 DATED: December 22, 2023

SALISIAN | LEE LLP

9
10 By:  _____

Neal S. Salisian

Glenn R. Coffman

Jared T. Densen

12 Attorneys for Plaintiff
13 AMERIS BANK d/b/a BALBOA CAPITAL
14 CORPORATION
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